

U.S. Customs Service Office of Strategic Trade Regulatory Audit Division

Guidance for Using Risk Exposure to Determine Review Areas

Introduction

This document is designed to provide general guidance for determining review areas for a Focused Assessment (FA). The FA reviews internal controls to evaluate the level of risk to Customs that exists from a company's imports.

In order to assess risk, Customs needs to identify the areas of Customs activity that represent risk (risk exposure) to Customs. The FA team must assess risk exposure by assessing the quantitative and qualitative risk associated with each of the company's Customs activities. Customs management determines qualitative risk. Quantitative risk is more easily evaluated because that can be evaluated based on volume of activity: for example, volume of imports under a particular activity or volume of duty impact or potential impact.

Each company has different organization structures, policies, and procedures and interacts differently with its various suppliers and customers. Each company has different staffs with different experience, capabilities, training, and knowledge. In addition, each company has different Customs activities, different volumes of Customs activities, and imports from different suppliers, countries, etc. Because of all the above variables and many more, each company represents a different challenge when Customs attempts to assess Customs risk related to the company's imports.

Procedures

Before starting an evaluation of internal controls, the FA team will have information about the company's Customs activities based on:

- Declarations to Customs,
- Other information in Customs databases,
- Information from various Customs disciplines such as import specialists and account managers, and
- Information from public sources such as Dun and Bradstreet.

In addition, the FA team will have company information through the company's response to the Pre-Assessment Survey (PAS) questionnaires, the advance conference, written internal control and procedures (if available), and possible preliminary interviews or discussions with company representatives.

Determination of a company's Customs risk exposure is a continuing process. The FA team will make a preliminary assessment of Customs risk exposure based on preliminary information as soon as it becomes available and will reassess the risk exposure as more information becomes available. For example, the profile for a company may indicate that a risk of misclassification of a particular item exists because of previous occurrences within the industry.

But when the company is interviewed and additional records are examined, the FA team may determine that the company does not import that item and that the risk of misclassification therefore does not exist for that company. The FA team will need to develop sufficient information about the company's actual import operations before risk exposure can be assessed. After the FA team has worked with the company and become familiar with the company's operations, the estimate of Customs risk exposure may vary significantly from the preliminary risk exposure based on the profile and initial analysis. The scope of the internal control review will be based on the assessment of the company's risk exposure.

The FA team will review all of the company's internal control policies and procedures by reviewing the company's written policy and procedures and/or responses to the FA questionnaire.

However, the FA process is designed to concentrate on the areas of significant risk to Customs. Accordingly, the FA team will focus its limited resources on the areas of greatest risk exposure for Customs, as determined by the team's evaluation of risk exposure and Customs-identified risks as determined by the analysis of risk identified by Compliance Assessments (CA), as explained below.

Risk Exposure

A major objective of the Focused Assessment is to verify that the company's internal control is adequate for the level of Customs risk. Accordingly, the FA team must work with the company to assess risk exposure. The following guidelines are intended to help the FA team assess risk exposure. They are general guidelines only and may not be appropriate in all circumstances.

Quantitative Factors

In an evaluation of internal control, the first measure of risk exposure should be quantitative because it is the easiest, most objective measure of risk.

If the company has relatively low activity in an area, the FA team may consider the area to be low risk unless qualitative factors increase the risk exposure.

Company plans for changes in operations affect risk exposure. A rapidly growing company may have higher risk exposure because of the increase in imports and the dynamic aspects that may affect control, particularly if the company does not have adequate risk assessment to respond to dynamic changes.

In contrast, if a company is discontinuing or significantly reducing some Customs operations, this change should be considered when assessing risk exposure. For example, if a company is discontinuing imports under provisions of Harmonized Tariff Schedule of the United States (HTSUS) 9802.00.80 to begin imports under a special trade program (STP), the FA team should discuss with appropriate company representatives the company's risk assessment of its planned operations under the STP. This discussion should provide some information about the company's plans to manage risk related to the imports under the STP program, even if imports have not begun under the STP.

If duty is a factor in determining risk exposure, risk exposure may be higher for some commodities than for others, even at the same activity level (volume of imports), because of variations in duty rate. This factor should be considered when company risk exposure is evaluated for duty.

Qualitative Factors

The other primary measure of risk exposure relates to qualitative factors. Historically, Customs has been highly concerned with transshipment, antidumping duties/countervailing duties

(ADD/CVD), quota, matters of national interest, and matters related to protection of domestic industries. This includes issues related to special duty provisions that are often designed to assist domestic industry.

Special trade programs are becoming increasingly important as more international trade agreements are negotiated and go into effect. The increasing impact of these international agreements will undoubtedly be a major concern to Customs in the future. The FA team should emphasize the importance of internal control to assure compliance with current trade programs and the importance of risk assessments when instituting new trade programs if the company indicates possible activity in new trade programs. In addition to increasing compliance in current special trade programs, this emphasis will help importers prepare adequate internal control systems for the new special trade programs as they are negotiated and implemented.

The FA team should place particular emphasis on known areas of Customs interest, such as those above, when considering qualitative risk.

Analysis of Compliance Assessments

Since the basic concept of an FA is to limit the focus of the audit so that Customs resources can be used most effectively, the FA team will limit the areas that it reviews extensively to form a risk opinion. The CA process has provided extensive information about companies' compliance in a variety of Customs activities. An analysis of results from 5 1/2 years of CAs has helped identify review areas that the FA team should focus on. The CA analysis showed that deficiencies most frequently occurred in value, classification, special duty provisions, and special trade programs. Some areas are of specific concern to Customs and must be considered high risk because of their significance and sensitivity (for example, transshipment and antidumping duties).

Summary Guidance for Using Risk Exposure Experience Related to Review Areas

The FA team will do a cursory review of all the company's internal control procedures by reviewing its documented internal control procedures and its responses to the PAS questionnaires. But the risk exposure of an area will determine whether a risk opinion should be issued for the area. A risk opinion will be issued only on areas with significant potential risk. Some areas will be reviewed extensively only when specific issues have been identified. The following general guidelines are designed to help the FA team determine the scope of the internal control review.

Value. The CA process identified extensive errors in value reporting. In addition, this is an area of major concern to Customs, and the FA is the only Customs program that addresses value, through a structured review of the company's accounting books and records. Because of these factors, a risk opinion on value should be issued with each FA report. The level of risk exposure may be higher for imports with higher duty rates.

Classification. The CA process identified extensive errors in classification reporting. In addition, this is an area of major concern to Customs. A risk opinion should be issued with each FA report. In some industries and some companies, the risk exposure will be low for classification, but a risk opinion should be developed to reflect that risk exposure. The level of risk exposure may be higher for imports with higher duty rates.

Special Trade Programs. The CA process identified extensive errors in STPs, and these areas have international impact. A risk opinion should normally be issued with each FA report if the importer has sufficient activity in STPs to indicate that a potential risk exists. The volume of

the STP should be clearly considered when evaluating the adequacy of internal control. In some companies the risk exposure will be low for STPs when the quantitative measure (volume of imports) is considered.

Special Duty Provisions. The CA process identified extensive errors in special duty provisions, and these areas are of special interest to Customs. Many special duty provisions were developed to assist domestic industry or as part of international programs. A risk opinion should normally be issued with each FA report if the importer has sufficient activity in the special duty provision to indicate that a potential risk exists. The volume of the special duty provisions should be considered when evaluating the adequacy of internal control. In some companies the risk exposure will be low for special duty provisions when the quantitative measure (volume of imports) is considered.

Antidumping Duties/Countervailing Duties. The CA process did not pursue ADD/CVD issues extensively, so reliable historic information is not available. These duties are of special interest to Customs, to domestic industry, and to Congress. A risk opinion should normally be issued with each FA report when ADD/CVD have been identified as a risk area.

Transshipment. The CA process did not pursue transshipment issues extensively, so reliable historic information is not available. Transshipment is of special interest to Customs, to domestic industry, and to Congress. A risk opinion should normally be issued with each FA report when transshipment has been identified as a risk area. This is particularly important in textile audits but may be identified as a risk area in other audits as well.

Recordkeeping Compliance. A separate risk opinion for recordkeeping is required only when some specific risk exists related to recordkeeping. A separate review and testing of recordkeeping compliance is not normally required. The adequacy of recordkeeping procedures (compliance with 19 CFR 163) will be verified during reviews of each Customs review area. If the company cannot provide records required by 19 CFR 163.3, the cause of the problem should be identified and addressed. The company may be subject to recordkeeping penalties for 19 USC 1509(a) (1)(A) violations. In most cases recordkeeping issues will cause deficiencies or errors in other Customs activities, so it will not be necessary to prepare a separate recordkeeping risk opinion.

Quantity. A separate risk opinion for quantity is required only when some specific risk exists related to quantity. For example, when specific or compound duty rates are based on quantity, then quantity may represent a risk that should be addressed. Quantity may be a risk area for imports of petroleum, footwear, alcoholic beverages, commodities subject to quota, and others. When quantity is identified as a risk area, a risk opinion should be issued.

Harbor Maintenance Fee and User Fee. Customs maintains automated controls to assure that harbor maintenance fees and user fees are accurately calculated. Previous experience has not indicated significant issues related to harbor maintenance fee and user fee compliance. A separate risk opinion is required only when specific risks are identified.

The following table summarizes the above guidance for determining FA review areas for developing risk opinions:

Summary Guidance for Determining Review Areas to Develop Risk Opinions

Review Area	Risk Opinion
Value	Always
Classification	Always
Special Trade Program	When identified as a risk area
Special Duty Provision	When identified as a risk area
ADD/CVD	When identified as a risk area
Transshipment	When identified as a risk area
Recordkeeping	When identified as a risk area that must be addressed separately
Quantity	When identified as a risk area
Harbor Maintenance Fees and User Fees	When identified as a risk area